

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of a Request by Northern States
Power Company d/b/a Xcel Energy for
Approval of a Power Purchase Agreement with
Navitas Energy, LLC

ISSUE DATE: July 17, 2002

DOCKET NO. E-002/M-02-51

ORDER APPROVING POWER PURCHASE
AGREEMENT, WITH CLARIFICATIONS
AND ADDITIONAL REQUIREMENTS

PROCEDURAL HISTORY

In a February 7, 2001 Order in Docket No. E-002/M-99-888, the Commission approved Xcel's selection of Northern Alternative Energy (NAE) for a combined peaking and wind energy supply resource. NAE created Navitas Energy LLC (Navitas) as the entity to undertake this project.

On January 15, 2002, Xcel filed the Amended and Restated Power Purchase Agreement (PPA) with Navitas for 51 MW of wind energy.

On January 28, 2002, the Commission issued a notice seeking comments on the filing.

On February 13, 2002, the Minnesota Department of Commerce (the Department) filed comments recommending approval only if the PPA included two modifications and Xcel was required to make a plan for recovery of transmission upgrade costs prior to the delivery date as defined in the PPA.

On March 20, 2002, Navitas filed reply comments arguing that the Department's recommendation to modify the PPA should be rejected and that the Commission should approve the PPA as submitted.

Also on March 20, 2002, Xcel filed reply comments asking the Commission to approve the PPA for the purchase of 51 MW of wind generation resources and clarify that the 1995 variance allows these costs to be included in the fuel clause or otherwise grant such a variance. Xcel also asked the Commission to 1) modify the recommendation of the Department with regard to the expansion option to avoid the need for a contract amendment, 2) approve the PPA to allow recovery of payments made by Xcel pursuant to the PPA including, Section 2.4 of Article 2 of the PPA (the curtailment provisions), and 3) accept the Department's recommendation to file a cost recovery petition for transmission upgrades prior to the delivery date as defined in the PPA.

On April 17, 2002, the Department filed supplementary comments recommending that the Commission approve the PPA with the following provisions included in the Commission's Order:

- Xcel must either seek Commission approval prior to exercising the expansion option in the PPA, or exercise the expansion option subject to Commission approval. In either case, Xcel must file with the Commission information showing that the price of the expansion option is reasonable.
- Xcel is not entitled to recovery of the transmission costs, associated with the transmission upgrades required to accommodate the Navitas project, through the fuel cost adjustment.

The Commission met on May 23, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

On April 6, 2000, Xcel filed a Final Evaluation Report in Docket No. E-002/M-99-888, selecting NAE to supply approximately 50 MW of wind energy and capacity and approximately 300 MW of combustion turbine electric energy and capacity. Following Commission approval of Xcel's selections in its February 7, 2001 Order, the Company entered into separate agreements with NAE for the combustion turbine generation (300 MW) and the wind generation (50 MW).

On December 31, 2001, Xcel and Navitas (entity formed by NAE to undertake these projects) terminated the combustion turbine project, amended the wind agreement, and filed it with the Commission for approval on January 15, 2002.

The filing of the PPA with the Commission for approval is the final step for this project in the bidding process. Under this PPA, Navitas will provide 51 MW of wind generation, generated from a facility proposed to be constructed near Xcel's Chanarambie substation on the Buffalo Ridge in southwest Minnesota.

II. SUMMARY OF ACTION

In this Order, the Commission finds that the Xcel-Navitas PPA for 51 MW wind generation, as modified by the three safeguards listed below, is reasonable and in the best interest of ratepayers. The Commission will approve it, clarifying that the following three safeguards are not adopted as amendments to the PPA, but as directives to Xcel which assure the reasonableness of the PPA and that it will serve the best interest of ratepayers:

- Xcel will be required to seek Commission approval prior to exercising the expansion option in the PPA or to exercise the expansion option subject to Commission approval. In either case, Xcel must demonstrate that the expansion option is reasonable at the time it seeks approval.

- To the extent that Xcel receives any compensation from the relevant transmission authority for calling an interruption of the energy generated from the Navitas project during the period Xcel is recovering curtailment provision costs from ratepayers, Xcel will be required to adjust the recovery level to ratepayers to reflect the compensation.
- Xcel will be required to identify in its monthly fuel adjustment report the date, length, cost to ratepayers, and reason for each Qualifying Production Loss Event associated with the Navitas project, and to summarize all such events in its annual automatic adjustment (AAA) report.

III. POWER PURCHASE ISSUES

A. Price

The PPA sets the annual nominal price based on market information, at a level lower than the price used to evaluate the wind project during the bidding selection, and lower than the price of \$33 per MWh approved for the small distributed wind tariff. Based on this, the Department advised and the Commission agrees that the price to be paid for wind is reasonable.

B. Protection of Ratepayers

A PPA should protect Xcel's ratepayers from risks of nonperformance, both financial and operational.

1. Financial Risks

Specific features in the PPA that protect both Xcel and its ratepayers against **financial risks** include letters of credit, escrow accounts and similar financial warranties. These features are summarized in sections 2.6 and 5.15 of the PPA. Also, the purchase price is the same for each year of the contract, eliminating the risk of front loading. After reviewing these features of the PPA, the Commission finds that Xcel's ratepayers are reasonably protected from the financial risks listed above.

2. Operational Risks

Specific features in the PPA that protect both Xcel and its ratepayers from **operational risks** include letters of credit, escrow accounts, and payments only for net energy actually delivered to Xcel. Also, the PPA includes restrictions on sale or transfer of the wind facility and provisions to allow Xcel to monitor the operational aspects of the project and to verify compliance with certain aspects of the project. After reviewing these features in the PPA, the Department concluded and the Commission agrees that except for the Qualifying Production Loss Event feature of the PPA to be discussed below, Xcel's ratepayers are reasonably protected from the operational risks noted above.

C. The Expansion Option

Section 2.2 of the PPA describes an expansion option which allows the seller, Navitas, to install an additional 49.5 MW of wind capacity.

The Department objected that Xcel's exercise of this option would violate the Commission's Order in Docket No. E-002/RP-93-63, which requires Xcel to use a competitive bidding process to acquire any additional supply-side resources over 12 MW. The Department also cautioned that the incremental transmission costs of such an option are not known at this time and could be significant. The Department emphasized the importance of comparing the cost of the wind option and the cost of all available alternative resources at the time the option is exercised.

Initially, the Department proposed a modification of the PPA to address its concerns, but in supplemental comments agreed with Xcel that an amendment to the PPA was unnecessary and did not object to Xcel's proposal that the Commission Order require Xcel to receive pre-approval for exercising its option or to exercise the expansion option subject to Commission approval. The Department recommended, however, that the Commission's Order also require Xcel to show that the price of the option is competitive with all available alternative resources when requesting the Commission's approval for exercising it. Xcel and Navitas did not object to that further recommendation by the Department.

The Commission finds that the issue raised by the Department is important and that the parties' agreed upon way to address it is reasonable. The Commission, therefore, will include the requested requirement in the Ordering Paragraphs of this Order.¹

D. Curtailment Issues

1. In General

Section 2.4 of Article 2 of the PPA contains provisions to assure that the Navitas project will continue to receive payment for energy it would have generated during certain qualifying events. A curtailment event under the PPA is any Xcel-imposed limitation on the amount of energy Navitas can deliver, including a limitation due to Xcel's failure to complete adequate transmission facilities. The PPA fully allocates the risk of non-performing transmission assets to Xcel's ratepayers.

Initially, the Department argued that during a qualifying event the wind generation facilities are not used or useful and that Xcel's ratepayers should not pay for energy that could have been delivered but was not due to the unavailability of transmission facilities. The Department initially recommended that the Commission find that Xcel is not entitled to recover from its ratepayers any payments made by Xcel to Navitas under Section 2.4 of Article 2.

¹ In opposing the Department's initial suggestion that the requirement be stated in the PPA itself, Xcel stated that it recognized that the Commission has sufficient authority to accomplish the desired result by making the condition a specific point in its Order and noted that Navitas is a participant in this proceeding and will be provided a copy of the Commission's Order, so it will be fully aware of the Commission's requirements in this regard as well.

Navitas disputed the Department's used and useful analysis but more importantly responded that the curtailment provision and recovery of curtailment payments from ratepayers were justified by short-term and long-term benefits to ratepayers. Navitas explained that prohibiting recovery from ratepayers and leaving Navitas' compensation during the affected period to be negotiated between Xcel and Navitas would jeopardize Navitas' revenue stream (including loss of any production based tax credits) and might cause lenders to increase the cost of debt to the project, which would translate into higher required PPA prices to Xcel and, ultimately, to its ratepayers.

Xcel argued that recovering curtailment option expenses from rate payers was legal, reasonable, and should be allowed. Xcel noted that Minn. Stat. § 216B.1645 authorizes recovery of all expenses incurred by the utility over the duration of the contract or useful life of the investment to satisfy the wind and biomass mandates. Xcel argued that expenses related to the curtailment option represent the least-cost solution to a timing difference between the addition of Navitas' wind generation and completion of the transmission system upgrade and ensure secure financing for Navitas' wind project.

In reply comments, the Department modified its position, agreeing with Xcel and Navitas that the curtailment provision was the most efficient (least cost) method to handle the transmission constraints, but also asserting that ratepayers will be double charged if Xcel is also allowed to recover the cost of transmission upgrades needed for the Navitas project. The Department argued that based on the unique circumstance of the Navitas PPA, the large investment needed to upgrade the transmission system for the Navitas project would not be prudent.

The Department, therefore, recommended that the Commission allow use of the curtailment provision in the PPA for the life of the contract but disallow any cost recovery of any transmission upgrades required for the Navitas project.

The Commission is persuaded that the curtailment option is reasonable and the least cost solution to the unavailability of transmission problem. The Commission will, therefore, allow recovery of payments made by Xcel pursuant to Section 2.4 of Article 2 of the PPA. In so finding, the Commission clarifies that the curtailment provision approved in this Order addresses the period between the project start date (anticipated to be mid to late 2003) and the transmission completion date (anticipated to be August 2004). When the transmission upgrade is completed, the need and use of the curtailment provision should end.

2. Prudence and Reasonableness of Transmission Upgrade Costs Not Addressed

This Order addresses the reasonableness of the Xcel-Navitas PPA, and as such, does not need to address (and does not address) the challenge raised by the Department to the prudence and, hence, recoverability of transmission upgrade costs associated with the Navitas project. And specifically, the Commission clarifies that approval of the Navitas PPA does not entitle Xcel to recover transmission upgrade costs through an automatic adjustment provision. These issues will be considered in a separate docket.

3. No Double Recovery

To the extent that Xcel receives any compensation for calling an interruption of the energy generated from the Navitas project, there should be no double recovery. Xcel should not be compensated by the relevant transmission authority for the interruption as well as recovering from ratepayers the curtailment fee paid to Navitas.

4. Reporting Use of the Curtailment Provision

The Commission has an interest in monitoring the use of the curtailment provision to assure that it is used for purposes approved in this Order. The Commission, therefore, will direct Xcel to identify, in its monthly fuel adjustment report, the date, length, cost to ratepayers, and reason for each "available transmission capability" constraint associated with the Navitas project, and to summarize all such events in its annual automatic adjustment (AAA) report. Xcel did not object to making such reports

5. Variance to Allow Recovery of Curtailment Costs Unnecessary

Xcel raised the issue of whether the curtailment provision costs are covered by the Commission's previous variance of the fuel clause adjustment rules to allow recovery of the wind mandate costs. Xcel argued that the original variance would cover the curtailment provision and the Department agreed.

In its September 5, 1995 Order in Docket No. E-002/M-95-244, the Commission permitted recovery of all costs of wind energy through the fuel clause. This variance was renewed in Docket No. E-002/M-96-934 and made a permanent variance in Docket No. E-002/M-97-985.

The Commission finds that curtailment costs are legitimate wind mandate costs. As such, they are covered by the existing variance and an additional variance is not needed to authorize recovery of curtailment costs via the fuel clause adjustment.

ORDER

1. Xcel's Power Purchase Agreement (PPA) with Navitas, including the curtailment provision Section 2.4 of Article 2, is approved as filed, along with the following related clarifications and requirements:
 - a. Xcel shall seek Commission approval prior to exercising the expansion option in the PPA or to exercise the expansion option subject to Commission approval; in either case, Xcel must demonstrate that the expansion option is reasonable at the time it seeks approval.
 - b. To the extent that Xcel, during the period Xcel is recovering curtailment provision costs from ratepayers, receives any compensation from the relevant transmission authority to Xcel for calling an interruption of the energy generated from the Navitas project, Xcel must adjust the recovery level to ratepayers to reflect the compensation.

- c. Xcel shall identify in its monthly fuel adjustment report the date, length, cost to ratepayers, and reason for each Qualifying Production Loss Event associated with the Navitas project and shall summarize all such events in its annual automatic adjustment (AAA) report.
 - d. No variance in the fuel clause is needed to allow Xcel to recover curtailment provision expenses.
 - e. The reasonableness and recovery of transmission upgrade costs associated with the Navitas project are not under consideration in this docket, and approval of the Navitas PPA does not entitle Xcel to recover transmission upgrade costs through an automatic adjustment provision.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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